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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/809,570

03/24/2004

Jean-Marc Alexia

S-215

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7590

03/30/2010

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EXAMINER

JOSEPH, TONYA S

ART UNIT

PAPER NUMBER

3628

NOTIFICATION DATE

DELIVERY MODE

03/30/2010

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/809,570
Filing Date: March 24, 2004
Appellant(s): ALEXIA ET AL.

George M. McDonald
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/16/2009 appealing from the Office action mailed 04/16/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,041,704	Pauschinger	3-2000
6,978,255	Pauchsinger et al.	12-2005

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6,527,170	Gordon et al.	3-2003
20020199094	Strand et al.	12-2002
2003/0006878 A1	Chung	1-2003
6.325.488	Beerling at el.	12-2001
2002/0140755	Hetzer et al.	10-2002
5,975,688	Kanaya et al.	11-1999
5,185,866	Francisco	2-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-22, 24, 26-31 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pauschinger et al. U.S. patent No. 6,978,255 B1 in view of Pauschinger U.S. Patent No. 6,041,704 in further view of Strand U.S. Pre-Grant Publication No. 2002/0199094 A1 and Hetzer at al. U.S. Pre-Grant Publication No. 2002/0140755.

As per Claims 19 and 31, Pauschinger et al. teaches a unit for generating franking data and a unit for printing data connected to said data generating unit and

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adapted to receive franking data therefrom (see Col. 5 lines 54-61 and Col. 9 lines 47-52), said printing unit including at least one member for printing data (see Col. 6 lines 36-41), wherein the franking machine includes: means for obtaining data enabling unique identification and authentication of the print member by the data generating unit in a first communication mode (see Col. 6 lines 63-67; Col. 7 lines 1-2; 40-44 and Col. 4 lines 49-51), Pauschinger et al. does not explicitly teach the limitation taught by Pauschinger wherein the franking machine includes: means for generating a signature of the franking data by the data generating unit (see Col. 5 lines 3-8), means for encrypting the signature of the franking data by the data generating unit using an encryption key determined using the obtained data that enabled identification and authentication of the print member (see Col. 5 lines 3-20 and 36-40), means for sending the franking data and the encrypted signature to the printing unit in a second communication mode, (see Col. 7 lines 54-59). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Pauschinger et al to include the teachings of Pauschinger to allow for the verification of franking imprints as taught in Pauschinger Col. 5 lines 5-7. Pauschinger et al. teaches and means for decrypting the encrypted signature. Pauschinger et al does not explicitly teach decryption performed by the print member. Strand teaches, The conduit cartridge encrypts information sent to an analytical system or an operating facility in communication with the conduit cartridge and can decrypt encrypted information received from an analytical system or an operating facility (see The Abstract of Strand). It would have been prima facie obvious to one of ordinary skill in the art at the time of

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invention to modify the systems of Pauschinger et al. and Pauschinger to include the teachings of Strand in order to provide for automated remote analyses, as taught in Strand para. 6 lines 3-4. Pauschinger does not explicitly teach the limitation taught by Hetzer et al. said printing unit including means for receiving printer control signals and a franking machine which include means for including/sending a control signal with printing control signals (see para. 34). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et al; Pauschinger and Strand to include the limitations of Hetzer to enable printing of desired data.

As per Claim 20, Pauschinger et al; Pauschinger and Strand teach the system of claim 1 as described above. Pauschinger et al. does not explicitly teach, wherein the print member includes means for authenticating data. Strand teaches the print member includes means for authenticating data (see para. 15 lines 29-34; 45-50; 53-54; 60-64 and para. 19 lines 4-20). Pauschinger et al. teaches franking data. It would have been prima facie obvious to one of ordinary skill in the art to modify the systems of Pauschinger et al; Pauschinger and Hetzer to further include the teachings of Strand in order to provide for automated remote analyses, as taught in Strand para. 6 lines 3-4.

As per Claim 21, Pauschinger et al; Pauschinger and Strand teach the system of claim 19 as described above. Pauschinger does not explicitly teach wherein the print member includes means for verifying the integrity of the franking data. Strand teaches wherein the print member includes means for verifying the integrity of the data (see para. 15 lines 29-34; 45-50; 53-54; 60-64 and para. 19 lines 4-20). Pauschinger et al.

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teaches franking data. It would have been prima facie obvious to one of ordinary skill in the art to modify the systems of Pauschinger et al; Pauschinger and Hetzer to further include the teachings of Strand in order to provide for automated remote analyses, as taught in Strand para. 6 lines 3-4.

As per Claim 22 and 44, Pauschinger et al; Pauschinger and Strand teach the system of claim 19 as described above. Pauschinger does not explicitly teach wherein the print member includes at least one tag identifying said print member. Strand teaches wherein the print member includes at least one tag identifying said print member (see para. 12 lines 6-10). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et al; Pauschinger and Hetzer to further include the teachings of Strand to aid in the identification of the cartridge. The limitation, “communicates data identifying said member to the data generating unit by radio waves when an electromagnetic field is applied to it”; “such that attempting to remove the tag will render it in operative is merely a statement of intended result and as such is afforded little patentable weight.

As per Claim 24, Pauschinger et al; Pauschinger and Strand teach the system of claim 19 as described above. Pauschinger et al. further teaches, wherein the data-generating unit includes a circuit for receiving identification data (see Col. 6 lines 63-67, Col. 7 lines 1-2 and 40-44, Examiner is interpreting meter able to recognize an identification code word as containing a circuit for receiving identification data).

As per Claim 26, Pauschinger et al; Pauschinger and Strand teach the system of claim 19 as described above. Pauschinger does not explicitly teach wherein the

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decrypting means of the print member have obtains data identifying said print member. Strand teaches wherein the decrypting means of the print member have knowledge of data identifying said print member (see para. 19 lines 34-44). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et al. and Pauschinger to include the teachings of Strand in order to maintain data integrity, as taught in Strand para. 34-44.

As per Claim 27, Pauschinger et al; Pauschinger and Strand teach the system of claim 19 as described above. Pauschinger et al. does not explicitly teach wherein the print member includes a data processing unit that includes the decrypting means. Strand teaches wherein the print member includes a data processing unit that includes the decrypting means (see para.15 lines 60-64). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et al. and Pauschinger to include the teachings of Strand in order to decrypt transmitted information, as taught in Strand para. 60-69.

As per Claim 28, Pauschinger et al; Pauschinger and Strand teach the system of claim 19 as described above. Pauschinger et al; does not explicitly teach the limitation taught by Strand wherein the decrypting means are fixed to a printed circuit that is fixed to the print member (see para. 18 and Fig. 3. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et al. and Pauschinger to include the teachings of Strand in order to verify information used by the cartridge, as taught in para. 17 lines 7-10. The limitation “wherein the printed circuit is sufficiently flexible to bend easily and sufficiently thin to be

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installed on a standard inkjet printer cartridge without compromising installation of the cartridge in a standard inkjet printer associated with the cartridge” is considered non-functional descriptive material and as such is afforded no patentable weight.

As per Claim 29, Pauschinger et al; Pauschinger and Strand teach the system of claim 19 as described above. Pauschinger et al; does not explicitly teach wherein the data processing unit is fixed to a circuit that is fixed to the print member; wherein the printed circuit is sufficiently flexible to bend easily and sufficiently thin to be installed on a standard inkjet printer cartridge without compromising installation of the cartridge in a standard inkjet printer associated with the cartridge Strand teaches wherein the data processing unit is fixed to a circuit that is fixed to the print member (see para. 12 lines 6-20 and Fig. 3). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et al. and Pauschinger to include the teachings of Strand in order to verify information used by the cartridge, as taught in para. 17 lines 7-10. The limitation “printed” is considered non-functional descriptive material and as such is afforded no patentable weight.

As per Claim 30, Pauschinger et al; Pauschinger and Strand teach the system of claim 19 as described above. Pauschinger et al. further teaches wherein the print member is an inkjet printer cartridge including at least one print head (see Col. 6 lines 31-41).

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pauschinger et al. U.S. Patent No. 6,978,255 B1 in view of Pauschinger U.S. Patent No. 6,041,704 in further view of Strand U.S. Pre-Grant Publication No. 2002/0199094 A1;

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Hetzer at al. U.S. Pre-Grant Publication No. 2002/0140755; Official Notice, as supported by Kanaya, and Chung U.S. Pre-Grant Publication No. 2003/0006878 A1.

As per Claim 23, Pauschinger et al; Pauschinger and Strand teach the system of claim 22 as described above. Pauschinger does not explicitly teach wherein the identification tag includes a substrate fixed permanently to the print member. Strand teaches wherein the identification tag includes a substrate fixed permanently to the print member (see para. 12 lines 6-10, Examiner is interpreting a non-moveable tag located inside the housing of the cartridge as being permanent). Pauschinger nor Strand teaches a substrate fixed permanently to the exterior of the printer. Official Notice, supported by Kanaya, is taken that a substrate fixed permanently to the exterior of a print member is old and well known. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et; Pauschinger, Strand and Hetzer to include the teachings of Official Notice to allow external access to a substrate. Pauschinger does not explicitly teach an identification tag with communication means on the substrate Chung teaches an identification tag with communication means on the substrate (see para. 96). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of systems of Pauschinger et; Pauschinger, Strand, Hetzer and Official Notice to include the teachings of Chung to tag and electronically identify objects as taught in Chung para. 96 lines 1-4.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pauschinger et al. U.S. Patent No. 6,978,255 B1 in view of Pauschinger U.S. Patent No.

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6,041,704 in further view of Strand U.S. Pre-Grant Publication No. 2002/0199094 A1; Hetzer et al. U.S. Pre-Grant Publication No. 2002/0140755 and Official Notice, as supported by admitted prior art.

As per Claim 25, Pauschinger et al; Pauschinger and Strand teach the system of claim 22 as described above. Pauschinger does not explicitly teach wherein the data-generating unit includes an RF transceiver. Official Notice is taken that a data-generating unit includes an RF transceiver is old and well known. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et; Pauschinger, Strand and Hetzer to include the teachings of Official Notice to facilitate communications with varied devices.

Claims 32-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pauschinger et al. U.S. Patent No. 6,978,255 B1 in view of Pauschinger U.S. Patent No. 6,041,704 in further view of Strand U.S. Pre-Grant Publication No. 2002/0199094 A1; Hetzer et al. U.S. Pre-Grant Publication No 2002/0140755 and Beerling et al. U.S. Patent No. 6,325,488 B1.

As per Claims 32-33, Pauschinger et al. does not explicitly teach the limitation taught by Beerling, a printed circuit comprising PTF polymer (see Col. 1 lines 53-65 and Col. 2 lines 1-9). Pauschinger teaches a decrypting means. Strand teaches a substrate fixed to a print member. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et; Pauschinger, Strand and Hetzer to include the teachings of Beerling to ensure strength and thickness, as taught in Beerling, Col. 9.

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As per Claims 34-41, Pauschinger et al. does not explicitly teach the limitation taught by Beerling, a printed circuit comprising PTF polymer that is approximately 0.125 mm thick; comprising a substrate and at least one circuit having a total thickness of less than 1.5 mm; from 1.5 mm through 2 mm (see Col. 9 lines 43-67). Pauschinger teaches a decrypting means. Strand teaches a substrate fixed to a print member. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et; Pauschinger, Strand and Hetzer to include the teachings of Beerling to ensure strength and thickness, as taught in Beerling, Col. 9.

Claims 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pauschinger et al. U.S. Patent No. 6,978,255 B1 in view of Pauschinger U.S. Patent No. 6,041,704 in further view of Strand U.S. Pre-Grant Publication No. 2002/0199094 A1 and Beerling et al. U.S. Patent No. 6,325,488 B1 and Official Notice, as supported by Francisco.

As per Claims 42, Pauschinger et al. in view of Pauschinger and Strand teaches the system of claim 19 as described above. Pauschinger et al does not explicitly teach wherein the first communications mode utilizes a first communications channel; and the second communications mode uses a second communications channel. Official Notice, supported by Francisco, is taken that the first communications mode utilizes a first communications channel; and the second communications mode uses a second communications channel is old and well known. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of

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Pauschinger et; Pauschinger, Strand and Hetzer to include the teachings of Official Notice to facilitate communications with varied devices.

Claims 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pauschinger et al. U.S. Patent No. 6,978,255 B1 in view of Pauschinger U.S. Patent No. 6,041,704 in further view of Strand U.S. Pre-Grant Publication No. 2002/0199094 A1 and Beerling et al. U.S. Patent No. 6,325,488 B1 and Official Notice, as supported by admitted prior art.

As per Claim 43, Pauschinger et al does not explicitly teach wherein the first communications channel is a wireless communications channel; and the second communications channel is a wired communications channel. Official Notice is taken that the first communications channel is a wireless communications channel; and the second communications channel is a wired communications channel is old and well known. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Pauschinger et; Pauschinger, Strand and Hetzer to include the teachings of Official Notice to facilitate communications with varied devices.

(10) Response to Argument

A. Strand is analogous art

Appellant argues that one of ordinary skill in the franking machine printing arts would not look to the Strand reference to modify the postage system of Paushinger. The Examiner disagrees. Paushinger is directed to protecting a device against operation with unallowed printer cartridges, (see the Abstract of Paushinger and Col. 6 lines 31-

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62) and Strand is related to printer cartridge encryption. Both are concerned with the authentication and security of print cartridges and chambers. One of ordinary skill in the art at the time of invention would have found Strand to be reasonably pertinent, because the matter with which it deals, logically would have commended itself to attention in considering his or her invention as a whole. *Stevenson v. International Trade Comm.*, 612 F.2d 546, 550, 204 USPQ 276, 280 (CCPA 1979)). "In a simple mechanical invention a broad spectrum of prior art must be explored and it is reasonable to permit inquiry into other areas where one of ordinary skill in the art would be aware that similar problems exist." See also *In re Bigio*, 381 F.3d 1320, 1325-26, 72 USPQ2d 1209, 1211-12 (Fed. Cir. 2004).

Contrary to Appellant's assertions, the combination of Strand and Paushinger would not be inoperable. Nothing in Paushinger tends to disparage the print member decryption described in Strand or otherwise present it as an unworkable solution. "[T]he prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed . . ." *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). Further, evidence to support these assertions has not been provided. Arguments of counsel cannot take the place of factually supported objective evidence. *In re Huang*, 100 F.3d 135, 139-40, 40 USPQ2d 1685, 1689 (Fed. Cir. 1996); *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984).

B. Paushinger et al. in view of Paushinger in further view of Strand and Hetzer et al. teach the recited limitations

Appellant argues that the cited references do not fairly teach or suggest the limitations of claims 19 and 31. The Examiner disagrees. Paushinger et al. teaches, "...means for obtaining data enabling unique identification and authentication of the print member by the data generating unit in a first communication mode...", as evidenced below:

To this end, in the inventive method and arrangement the manufacturer of the consumable generates at least one code that identifies the consumable. The allocation of the code to a **specific** consumable is stored in a data bank in the form of a dataset with reference code word, possibly with an identification number. The identification code characterizes the nature of the consumable. An aggregation of the consumable with the generated code word ensues at the manufacturer by the code word being attached to a consumable offered for sale, or is permanently allocated thereto by fastening or comparable measures. This includes marking the consumable with this code word, which can ensue in very different ways with physical or chemical measures dependent on the physical state of the consumable. This marker code word has a predetermined relationship to the reference code word or to a group of reference code words that are presently stored in the data bank in the data center of the manufacturer. A transmission of the code word aggregated to the consumable ensues after recognition of an operation of changing a consumable in a device remote from the data center and the setup of a communication connection to the remote data center. When there is agreement with the reference code word, for

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example, the **authenticity** can be checked in the data center by a comparison operation in the simplest case. When the check ensues in the data center, of course, a transmission of reference code words to the device and a specific evaluation hardware/software can be omitted (see Col. 4 lines 5-40).

Contrary to Appellant's assertions, Paushinger et al. in view of Paushinger, teaches, means for generating the signature of the franking data by the data generating unit using an encryption key. Specifically, Paushinger describes,

The security needs of the postal authorities thus have taken into consideration, but only the necessary franking data are processed in a suitable way in postage meter machines to form a digital signature that allows a verification of the franking imprints. The digital signature is composed of an encrypted message that is a component of the code that is printed machine-readable in the second section. The message is derived from at least the necessary franking data that are machine-readably printed in unencrypted form (see Col. 5 lines 3-20 and 36-40).

As demonstrated above, the system of Paushinger includes means for encrypting the signature of the franking data by the data generating unit. Paushinger further teaches means for sending the franking data and the encrypted signature to the printing unit in a second communication mode-(i.e. an encrypted code printed on a mailpiece, as described in Col. 7 lines 54-59). Appellant further asserts that Hetzer does not teach printing control signals. The Examiner disagrees. Hetzer plainly describes print control signals in it's description of the franking machine (see para. 34). Furthermore, the

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combined systems of Paushinger et al., Paushinger, Strand and Hertz are capable of performing the recited functions.

The Examiner Notes: While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

Appellant argues with respect to claims 22 and 24 that the rejections are improper. The Examiner disagrees. Appellant's claims are directed to a print member including at least one permanently attached tag, identifying said print member. Strand was relied upon to teach these limitations (see para. 12 lines 6-10). Appellant's recitation of the intended results of the tags does not remedy the finding of fact that the product is old and well known. The recitation of a new intended use for an old product does not make a claim to that old product patentable. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Appellant further argues with respect to claims 28 and 29 that the rejections are improper. The Examiner disagrees. Appellant's claims are directed to a fixed decrypting means on a printed circuit. Strand was relied upon to teach these limitations (see para. 18 and Fig. 3). Furthermore, the system of Strand meets the physical requirements of claimed subject matter.

C. The dependent claims are unpatentable over the cited references

Appellant argues with respect to claims 23 that the cited references do not teach "wherein the identification tag includes a substrate fixed

permanently to the exterior of the print member and communication means on the substrate” The Examiner disagrees. Strand and Kanaya were relied upon to teach this limitation (see para. 12 lines 6-20; Fig. 3 and Kanaya (see Col. 2 lines 14-20, 35-40 and Fig. 1)).

Appellant further asserts that the number of references used in the examiner's conclusion of obviousness is based upon improper hindsight reasoning. The Examiner disagrees. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Appellant further asserts with respect to claims 32-43 that the Examiner's taking of Official Notice, while not disputed, is not properly combined. The Examiner disagrees and has provided evidence, in the FINAL office action dated 04/16/2009, to substantiate the claims. Again, Applicant presents no analysis as to why the above results would be anything other than expected when adding known features to a franking machine. Moreover, arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). "It is well settled that unexpected results must be established by factual evidence." *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ

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191, 196 (Fed. Cir. 1984). Applicant has provided no evidence that any of the above results would be unexpected.

Accordingly, the Examiner respectfully maintains that the rejections are proper and should be affirmed

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tonya Joseph

/TONYA JOSEPH/

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Supervisory Patent Examiner, Art Unit 3628

Vincent Millin /vm/

Appeals Practice Specialist